

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3026 OF 2019

Ajaj Sattar Pathan

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Aniket Nikam i/b. Mjr.Vivek N. Arote, Advocate for the Applicant.

Mr.A.A. Takalkar, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 20, 2020.

P.C. :

This is an application for bail in connection with C.R.No.19 of 2019, registered with Wanvadi Police Station, Pune, for the offences punishable under Sections 307, 120-B, 201, 143, 144, 147, 148, 149 and 506(II) of Indian Penal Code ("IPC", for short) and under Sections 37(1) read with 135 of Maharashtra Police Act as well as Sections 3, 4(25) of Arms Act. Subsequently, provisions of Section 3(1)(ii), 3(2) of the Maharashtra Control of Organized Crime Act ("MCOC Act", for short), were invoked. First Information Report ("FIR", for short) was lodged on 5th January, 2019 by Nilesh Ginavat.

2 The prosecution case is that the informant is resident of Kanjarbhat Wasti and his family is in construction business. On 4th January, 2019, the informant learnt that some of the resident of Kanjarbhat Wasti/relatives of the informant were assaulted by accused Tipu Pathan, Nadeem Khan and others. It was learnt that the person from the Kanjarbhat Wasti are proceeding towards his place with weapons. On 5th January, 2019, the accused came near the residence of the complainant. They were armed with weapons. The complainant had brought his sister and her family to his house for safety reasons. The accused assaulted the complainant in front of his house. Accused Tipu Pathan has raised pistol and threatened the people. The complainant managed to run inside his house. With a view to avoid any damages being caused to his vehicle Land-Rover, he decided to keep the vehicle in the house of his neighbour for safe custody. While he was proceeding by his vehicle, the accused who were in large number chased him, and they attacked the vehicle of the complainant. The co-accused, Tipu Pathan is brother of the applicant. He was amongst them. He fired at the vehicle. The complainant managed to reach Hadapsar Police station and lodged FIR. It is further alleged that the main accused are conducting the security agency. One Bahadur Singh was working with the said agency. He had a

licenced pistol. Since he was proceeding to his native place, he had handed over the said weapon (Pistol) to his co-employee. The said co-employee handed over the same to the applicant. Applicant told him to hand over the weapon to his brother Tipu Pathan. It is alleged that the same weapon was used by Tipu Pathan in commission for the aforesaid crime. There are several cases registered against Tipu Pathan, running a crime syndicate and approval is sought for invoking the provisions of MCOC Act. Approval was granted. Investigation proceeded. Charge-sheet was filed. Several accused were arrested. The applicant was arrested on 5th January, 2019. On completing investigation, charge-sheet was filed.

3 Learned counsel for the applicant submitted that there is no evidence against the applicant showing his involvement in the crime. Provisions of MCOC Act are not attracted in the present case *qua* applicant. There are no criminal antecedents against the applicant. He is not named in the FIR. He has not been identified by two eye witnesses. There is no recovery from the applicant. He is not seen in the CCTV Footage collected by the investigating agency. He is not involved in any case along with the alleged crime syndicate or gang leader.

4 Learned APP submitted that although the applicant was not named in the FIR, he was identified by the complainant. It is further submitted that the offence is of serious nature. Several person had gathered together and they assaulted complainant. They created terror in the area. They chased the complainant who was proceedings through his vehicle. One of them had fired at him and tried to kill him. The gang leader is the brother of the applicant. There are statements of witnesses in which it is stated that Tipu Pathan indulging in unlawful activities, is involved in other cases. He is committing offence of extortion. It is further submitted that the statements of five witnesses were recorded in-camera. The witnesses have stated that he was party to the crime committed by Tipu Pathan. He is managing his funds. It is, thus, submitted that there is sufficient evidence against the applicant showing his involvement in the crime and the provisions of the MCOC Act is applicable to him.

5 I have perused the charge-sheet and the reply filed by the prosecution. Undisputedly, there are no criminal antecedents against the applicant. There is no evidence to show that he was involved with the prime accused in commission of any crime. The first informant had disclosed involvement of about 15

to 20 persons. He has named the brother of the applicant, however, the name of the applicant is not disclosed in the FIR. However, the Test Identification Parade was conducted subsequently in which the applicant had been identified by the complainant. However, on perusal of the FIR, it is apparent that a group of persons had allegedly visited the house of the complainant and they had pelted stones and assaulted the complainant. In pursuant to the parade, the investigating agency has not recorded the statement of the complainant to fortify the role played by him. It is pertinent to note that there are two eye witnesses, namely, Sunil Salve and Aakash. They were also put up in the Identification Parade. They had referred to the incident of assaulting complainant and pelting stones, creating terror etc. However, they have not identified the applicant in the Test Identification Parade. It is relevant to note that the investigating agency has recovered CCTV Footage of the place of incident. Panchanama in that regard was recorded on 26th February, 2019. Undisputedly, the presence of the applicant is not shown in the CCTV Footage. The prosecution is further relying upon the fact that one of the employee was having a licenced pistol and the said pistol was to be handed over to the applicant. It is relevant to consider that the pistol was handed over to the co-accused and

not to the applicant. In any case, it was a licenced pistol, which was in the name of the employee Bahadur Singh. He was on leave and instead of depositing the pistol with concerned authroity, to save time it was kept with accused. It is not the case of the prosecution that the applicant has used this arm in commission of crime. Although there are eye witnesses to the incident, the investigating agency has recorded statement of five witnesses in camera. The said statement were recorded on 19th April, 2019 and 25th April, 2019, i.e. after the period of about four months from the date of incident. In any case, the version of the said witnesses is vague. In the light of nature of evidence of the applicant in the crime and also considering the fact that he is not involved in any crime along with the alleged crime syndicate, the restrictions under Section 21(4) of the MCOC Act, would not preclude the Court from granting bail to the applicant. In the circumstances, case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.3026 of 2019, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No.19 of 2019, registered with Wanvadi Police Station, Pune, on his executing P.R. Bond in the sum of Rs.50,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall stay outside the jurisdiction of Wanvadi Police Station, till conclusion of trial;
- (iv) Applicant shall not tamper the prosecution evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)